

From: Eric Benedict
To: Microsoft ATR
Date: 1/8/02 2:32pm
Subject: Microsoft Settlement

Dear Ms. Hesse,

This letter is concerning the proposed DOJ vs. Microsoft settlement.

I am an electrical engineer with over 15 years of computer usage and experience including MS-DOS, Windows and UNIX/Linux platforms. This experience includes usage, development and system administration tasks.

I am greatly concerned and troubled about details of the proposed settlement. In particular, I am troubled by the large and numerous loopholes which are present in the settlement. In particular, Section III, Part J, Paragraph 2 greatly concerns me. This paragraph clearly allows Microsoft to set up several barriers to prevent a third party from obtaining the information which Microsoft is supposed to make available as part of the settlement. Microsoft only has to release the information if Microsoft determines that the third party "meets reasonable, objective standards established by Microsoft of certifying the authenticity and viability of its business". It is quite simple to establish reasonable, objective standards which will exclude virtually any third party which Microsoft doesn't wish to disclose the settlement stipulated information to. Further, should such a third party exist, Microsoft can further impede this party by requiring that the party submit their code "at its own expense ... to third party verification, approved by Microsoft". Thus, should someone make it through the gauntlet of conditions stipulated by Microsoft to have a legitimate need, Microsoft can require that they release their code to a Microsoft approved tester. There are no controls over this third party tester, their relationship with Microsoft, etc. Microsoft can quite easily influence the 'testing fee' to be sufficiently out of the reach of all but the wealthiest entities. It also isn't clear that Microsoft won't be given access to the submitted code information which also would assist Microsoft by allowing them to review their competitor's source code.

Furthermore, I am also troubled that third party middleware can be excluded from invocation if a Microsoft determined functionality is not present. The way the current settlement agreement reads to me, Microsoft can evaluate a third party program, determine a functionality which this program does not provide, arbitrarily decide that this functionality "X" is now "required" and then ship the Microsoft OS version which doesn't allow the third party's program to be launched. The third party then has to ask Microsoft why, Microsoft then responds that they were missing this newly required functionality "X" and that they need to provide it in order to be compatible. Meanwhile the third party has already "missed the boat" and must wait until

the next Microsoft release. Of course for the next release, Microsoft can "innovate" some more and determine a new functionality "Y" is now required (amazingly missing from the third party's program) and so yet again, the third party is effectively shut out from being included. This can continue for as long as Microsoft wishes (or until the third party is bankrupt) and so Microsoft can effectively determine what software is allowed and prevent any undesired competition.

These (and the numerous other loop holes which are present) effectively allow Microsoft to continue business as usual, but now *legally*! This will effectively insulate Microsoft from future anti-trust action since they can point to the fact that this agreement allowed them to do those actions! Very good for Microsoft, but not for the consumer!

I am also concerned that the settlement also only provides (nearly non-existent) remedies on future behavior and does not appear to contain any punishment for prior inappropriate actions. This appears to me akin to allowing a successful but convicted criminal (drug dealer, bank robber, inside trader) to keep all of their ill gotten gains and then telling them to try to be good in the future. Microsoft was determined to be guilty of breaking the law. Where is the punishment?

In an ideal world, I would like to see some punitive measures incorporated into the settlement; however, the world isn't ideal. At the minimum, I would like to see some real restrictions (with out loopholes) on Microsoft's future conduct. Anything less makes me have real strong suspicions of a sell out to Microsoft and that our system of justice is a joke or at least bought and paid for by the highest bidder.

Thank you.

Eric Benedict
175 Lakewood Gardens Lane
Madison, WI 53704
benedict@cae.wisc.edu
eben@zephyr.ece.wisc.edu

CC: benedict@cae.wisc.edu@inetgw